

Kenneth H. Brown (CA Bar No. 100396)  
Miriam Manning (CA Bar No. 178584)  
PACHULSKI STANG ZIEHL & JONES LLP  
One Sansome Street, 34th Floor, Suite 3430  
San Francisco, CA 94104  
Telephone: 415/263-7000  
Facsimile: 415/263-7010

E-mail: kbrown@pszjlaw.com  
mmanning@pszjlaw.com

Counsel for E. Lynn Schoenmann,  
Chapter 7 Trustee

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

In re:

PETER R. FADER  
*dba* Urchin Capital Partners  
*dba* Urchin Partners LLC.

Debtor.

Case No.: 08-30119-DM

Chapter 7

**TRUSTEE'S MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT OF MOTION FOR ORDER  
AUTHORIZING PAYMENT OF  
ESTATE'S POST-PETITION TAX  
OBLIGATIONS**

Hearing Date

Date: November 15, 2022

Time: 11:30 a.m.

Place: Courtcall/Videoconference

Judge: Honorable Dennis Montali

E. Lynn Schoenmann, the duly appointed Chapter 7 Trustee in the above-captioned bankruptcy case (the “Trustee”), submits this Memorandum of Points and Authorities in support of the *Chapter 7 Trustee’s Motion for Order Authorizing Payment of Estate’s Post-Petition Tax Obligations* (the “Motion”) filed concurrently herewith.

I

## JURISDICTION

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this District pursuant to 28 U.S.C. § 1409. The motion constitutes a core proceeding in

1 accordance with 28 U.S.C. §§ 157(b)(2)(A) and (B). The statutory predicate for the relief sought  
2 herein is 11 U.S.C. § 503(b)(1)(B)<sup>1</sup>.

3 **II.**

4 **BACKGROUND**

5 On January 26, 2008, the Debtor filed a voluntary chapter 7 petition in this Court. The  
6 Debtor received a discharge and the case was subsequently closed in 2010. On July 14, 2019, the  
7 Debtor filed an application to reopen his bankruptcy case to disclose claims based on oral  
8 agreements previously omitted from his bankruptcy schedules (“Claims”) and to enable the Trustee  
9 to determine whether the Claims constitute property of the estate that could be prosecuted by the  
10 Trustee.

11 On September 13, 2019, the United States Trustee appointed E. Lynn Schoenmann as the  
12 Chapter 7 trustee.

13 On September 15, 2019 the Debtor’s bankruptcy case was reopened to enable the Trustee to  
14 investigate and possibly pursue the Claims for the benefit of the estate and its creditors.

15 On October 19, 2022, the Trustee filed a *Motion to Approve Compromise of Adversary*  
16 *Proceeding Against Steven R. Boal and Quotient Technology Pursuant to FRBP 9019* which seeks  
17 Bankruptcy Court approval to settle the Claims for the sum of \$5,000,000 (“Settlement Amount”)  
18 payable in two installments of \$2,500,000 each. Upon the estate’s receipt of each \$2,500,000  
19 installment, the estate will incur tax obligations to the United States Treasury and California  
20 Franchise Tax Board.

21 The Trustee’s accountant, Jay Crom of Bachetti, Crom & Co., LLP (“Crom”) has  
22 calculated the estate’s estimated income tax obligations arising from the estate’s receipt of the  
23 Settlement Amount. The actual amount of taxes depends on variables such as the amount of  
24 deductible expenses paid in each tax year and the taxes due could be impacted by changes in tax  
25 law and other factors. Crom estimates estate’s taxes will not exceed the following amounts:

- 26 a. \$345,000 payable in 2022 and \$265,000 payable in 2023 to the United States  
27 Treasury; and

28 \_\_\_\_\_  
<sup>1</sup> Unless otherwise specified, statutory references are to the Bankruptcy Code.

1                   b.       \$128,000 payable in 2022 and \$106,000 payable in 2023 to the California  
2                   Franchise Tax Board.

3                   If these tax obligations are not timely paid, the estate may incur penalties and interest.

4                   **III.**

5                   **STATEMENT OF ISSUES TO BE DECIDED**

6                   The issue to be decided in this Motion is whether the Trustee may pay the estate's tax  
7                   obligations arising from the estate's post-petition receipt of the Settlement Amount as administrative  
8                   expenses under section 503(b)(1)(B).

9                   **IV.**

10                   **THE RELIEF SOUGHT SHOULD BE GRANTED**

11                   The estate's post-petition tax obligations are allowable administrative expenses. Section  
12                   503(b)(1)(B) provides that "After notice and a hearing, there shall be allowed administrative  
13                   expenses...any tax...incurred by the estate." The Trustee seeks authority to pay the estate's post-  
14                   petition tax liability owing to the United States Treasury and the California Franchise Tax Board as  
15                   administrative expenses arising from the settlement of the estate's Claims for the sum of  
16                   \$5,000,000. Because the \$5,000,000 Settlement Amount is expected to be paid in two equal  
17                   installments of \$2,500,000 in 2022 and 2023, the payments to the estate will give rise tax  
18                   obligations owing to the United States Treasury in the aggregate amount of \$610,000 for the 2022  
19                   and 2023 tax years and the aggregate amount of \$234,000 owing to the Franchise Tax Board for the  
20                   2022 and 2023 tax years. The estate's tax obligations arising from the settlement of the Claims will  
21                   occur during the post-petition period, are valid administrative expenses pursuant to 11 U.S.C.  
22                   Section 503(b)(1)(B) and should be paid in the 2022 and 2023 tax years in order to avoid any late  
23                   fees or penalties.

24                   Notice of this Motion has been provided to all creditors on the matrix, the United States  
25                   Trustee, the Debtor and all parties who have requested special notice pursuant to Bankruptcy Rule  
26                   2002. The Trustee submits that notice of this Motion is proper and in accordance with *In re*  
27                   *Cloobeck*, 788 F.3d 1243, 1245-46 (9<sup>th</sup> Cir. 2015) ("section 503(b)'s plain language and use of the  
28                   phrase "after notice and a hearing" require notice before a trustee can pay administrative tax

1 liabilities"). No prior motion for the relief requested herein has been made to this or any other  
2 Court.

3 **WHEREFORE**, the Trustee respectfully requests that the Motion be granted and for such  
4 other and further relief as the Court deems necessary and proper.

5 Dated: October 21, 2022

PACHULSKI STANG ZIEHL & JONES LLP

6 By: /s/ Miriam Manning

7 Kenneth H. Brown  
8 Miriam Manning  
Counsel for E. Lynn Schoenmann,  
9 Chapter 7 Trustee